

**FILED**

**FOR PUBLICATION**

**APR 12 2012**

**UNITED STATES COURT OF APPEALS**

**MOLLY C. DWYER, CLERK**  
U.S. COURT OF APPEALS

**FOR THE NINTH CIRCUIT**

**CONSTANTINO CARRERA,**

Petitioner - Appellant,

v.

**ROBERT L. AYERS Jr., Warden of the  
California State Prison at San Quentin,**

Respondent - Appellee.

No. 08-99007

D.C. No. 1:90-CV-00478-AWI

**ORDER**

**KOZINSKI**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.